

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA)	
)	NO. 3:06-CR-92
v.)	
)	Judges Phillips/Guyton
JAMES MICHAEL WEST,)	
also known as JAMES M. WEST)	
also known as JAMES WEST,)	
also known as MIKE WEST,)	
JOANNE BAKER WEST,)	
RONALD SCOTT WEST,)	
BERNADETTE TRENT WEST,)	
PHILLIP A. APODACA,)	
MARK ANTHONY CORT,)	
PRESERVATION PUBLIC, LLC, and)	
SPIRAL-WEB, INC., also known as)	
SPIRAL-WEB, INC., DBA)	
SENSUA GALLERY)	

FINAL ORDER OF FORFEITURE

1. On August 8, 2006, a Superseding Indictment was filed in the above-referenced case charging Defendants JAMES MICHAEL WEST, a/k/a James M. West, a/k/a/ James West, a/k/a Mike West; RONALD SCOTT WEST; PRESERVATION PUBLIC, LLC and SPIRAL-WEB, INC., also known as SPIRAL-WEB, INC., DBA SENSUA GALLERY and others, with in Count One, knowingly, intentionally, and without authority, combining, conspiring, confederating, and agreeing with others to commit violations of Title 21, United States Code, Section 841(a)(1), that is, to distribute, and possess with intent to distribute, in excess of 1,000 kilograms of a mixture and substance containing a detectable amount of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 846, 841(a)(1), and 841(b)(1)(A); and, in Count

Two, charging Defendants, JAMES MICHAEL WEST, a/k/a James M. West, a/k/a/ James West, a/k/a Mike West; JOANNE BAKER WEST; RONALD SCOTT WEST; BERNADETTE TRENT WEST; PRESERVATION PUBLIC, LLC and SPIRAL-WEB, INC., also known as SPIRAL-WEB, INC., DBA SENSUA GALLERY and others, with willfully, knowingly, intentionally, and without authority combining, conspiring, confederating, and agreeing to commit certain offenses against the United States as follows: knowing that the property involved in financial transactions represented the proceeds of some form of unlawful activity, conducting and attempting to conduct such financial transactions with intent to promote the carrying on of a specified unlawful activity, and the concealing and disguising the nature of, the location, source, ownership, and control of the proceeds of a specified unlawful activity, that is, the distribution of, and possession of with intent to distribute marijuana, a Schedule I controlled substance, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i), (a)(1)(B)(i) and (h).

In the forfeiture allegations of the Superseding Indictment in the above-referenced case, the United States sought forfeiture of the interest of the above-named Defendants, pursuant to Title 21, United States Code, Section 853, in any property constituting, or derived, from proceeds obtained, directly or indirectly, as a result of the conspiracy and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of said conspiracy; and pursuant to, Title 18, United States Code, Section 982(a)(1), in any property involved in the violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i), (a)(1)(B)(i) and (h), and any and all property traceable thereto.

- b. The above Defendants have pled guilty to the Superseding Indictment as follows:
- (a) The Defendant, JAMES MICHAEL WEST, a/k/a James West, a/k/a Mike West, pled guilty on August 24, 2006, to Counts One and Two of the Superseding Indictment.
 - (b) The Defendant, JOANNE BAKER WEST, pled guilty on August 24, 2006, to Count Two of the Superseding Indictment.
 - (c) The Defendant RONALD SCOTT WEST and PRESERVATION PUBLIC, L.L.C. pled guilty on September 11, 2006, to Counts One and Two of the Superseding Indictment.
 - (d) The Defendant BERNADETTE TRENT WEST and PRESERVATION PUBLIC, L.L.C. pled guilty on September 11, 2006 to Count Two of the Superseding Indictment.
3. The Defendants pled guilty as referenced above and agreed to forfeit to the United

States their interest in the following properties¹:

- (a) Real Property, situated in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being known and designated as Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition, as shown by map recorded as Instrument No. 200303240084555, in the Knox County Register's Office, said lot being more fully bounded and described by map, to which map specific reference is hereby made for a more particular description.

Recorded in the Register of Deeds Office for Knox County, Tennessee on September 5, 2005, as Instrument Number 200509060021878, titled to the Industrial Development Board of the City of Knoxville. Being the same property conveyed by Quit Claim Deed dated May 9, 2003, from Scott and Bernadette West to Lessee recorded with the Knox County Register of Deeds at Instrument No. 200305120102834. (16, 18, 20, 22 Market Square).

¹ This Final Order of Forfeiture only pertains to the Market Square properties in this case. The other properties in this case will be the subject of a separate Final Order of Forfeiture to be filed at a later date.

- (b) The “Lease” concerning the aforesaid real property described in paragraph (1) immediately herein above, dated August 1, 2005, entered into by the Industrial Development Board of the City of Knoxville, a public nonprofit corporation organized and existing under the laws of the State of Tennessee (“Lessor”), and Preservation Public LLC (“Lessee”) as evidenced by the “Memorandum of Lease” of record as Instrument Number 200509060021879 in the Register of Deeds for Knox County, Tennessee, and which reads in part as follows:

WHEREAS, Lessor is a public nonprofit corporation and a public instrumentality of the City of Knoxville, Tennessee, and is authorized under Sections 7-53-101 to 7-53-311, inclusive, Tennessee Code Annotated, as amended (the “Act”), to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for certain purposes identified in the Act.

WHEREAS, in order to encourage Lessee to construct and rehabilitate an approximately 26,300 square foot residential and commercial buildings located at 16 – 22 Market Square, Knoxville, Tennessee, thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property hereinafter more particularly described, on the terms and conditions set forth herein;

WHEREAS, the City Council of the City of Knoxville, Tennessee, authorized the Lessor to negotiate and accept from Lessee payments in lieu of ad-valorem taxes pursuant to Resolution No. R-377-03 approved September 10, 2003; and

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents devise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the premises described in Exhibit A attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise.....

- (c) Real Property, located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square, and more particularly described as follows:

BEGINNING at the center of a brick division wall between Eckle and Gossett (former owners) at the pavement on said Market Square; thence Easterly with said Gossett line about 120 feet to an alley; thence Southerly along said alley 20 feet 4 inches; thence Westerly along the center of the wall of the present brick business house formerly belonging to Eckle about 120 feet to Market Square; thence Northerly 20 feet 4 inches to the BEGINNING. Being known as 28 Market Square Mall. It being the true meaning and intent to convey to the second parties to the center of each wall on each side of said lot.

Recorded in Warranty Deed registered on August 28, 2002, as Instrument Number 200208280017284, in the Register of Deeds Office for Knox County, Tennessee, titled to Scott West and wife, Bernadette West. (28 Market Square)

- (d) Real Property, located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being Lot 13 of Swan and Mabry's Addition, which lot runs 28 feet on the East side of Market Mall and extends East along the South line of Wall Avenue, 118.1 feet, more or less, to an alley, and being more particularly described as follows:

BEGINNING at a point marking the intersection of the Eastern line of Market Square with the Southern side of Wall Avenue; thence in an Easterly direction and with the Southern line of Wall Avenue, North 63 deg. East 118.1 feet to an iron pin in the Westerly line of a 10 foot alley; thence in a Southerly direction with the Western line of said alley, South 27 deg. East 28.0 feet to an iron pin; thence South 63 deg. West 118.1 feet to the Eastern line of East Market Square; thence with the Eastern line of East Market Square, North 27 deg. West 28.0 feet to the point of BEGINNING, as shown by Survey of Property of Fikret T. Gencay by Michael E. Luethke, Tennessee Registered Surveyor No. 842, Luethke Surveying Company, 6538 Vintage Drive, Knoxville, Tennessee 37921. Said survey being dated July 7, 1994, and bearing Drawing No. 94287.

Recorded in Warranty Deed registered on May 9, 2002, as Instrument Number 200205090093076, in the Register of Deeds Office for Knox County, Tennessee, titled to Bernadette West and husband, Scott West. (36 Market Square also known as 320 Wall Avenue)

4. Agreed Preliminary Orders of Forfeiture pursuant to the guilty pleas entered by the Defendants, forfeiting to the United States their interest in and to the properties identified hereinabove were entered as follows:

- (a) On August 29, 2006, this Court entered an Agreed Preliminary Order of Forfeiture pursuant to the guilty plea entered by the Defendant, JAMES MICHAEL WEST, a/k/a James West, a/k/a Mike West.
- (b) On August 29, 2006, this Court entered an Agreed Preliminary Order of Forfeiture pursuant to the guilty plea entered by the Defendant, JOANNE BAKER WEST.
- (c) On September 11, 2006, this Court entered an Agreed Preliminary Order of Forfeiture pursuant to the guilty plea entered by the Defendant, RONALD SCOTT WEST and PRESERVATION PUBLIC, L.L.C.
- (d) On September 11, 2006, this Court entered an Agreed Preliminary Order of Forfeiture pursuant to the guilty plea entered by the Defendant, BERNADETTE TRENT WEST and PRESERVATION PUBLIC, L.L.C.

5. Pursuant to Title 21, United States Code, Section 853(n)(1), as incorporated by Title 18, United States Code, Section 982(b), and the Agreed Preliminary Orders of Forfeiture, Notice of Forfeiture as to the properties described above, was published in the *Knoxville News Sentinel*, a newspaper of general circulation in Knoxville, Tennessee on three occasions: October 3, 2006; October 10, 2006; and October 17, 2006. Proof of publication was filed on December 4, 2006.

6. The Notice of Forfeiture advised that any person, other than the Defendants, having or claiming a legal interest in the forfeited properties described herein, must file a petition with the Court within thirty (30) days of the final publication of the notice. The notice further provided that the petition shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought.

7. **Third Party Claims**

Industrial Development Board of the City of Knoxville (the “IDB”)

The Industrial Development Board of the City of Knoxville (the “IDB”) filed a claim on October 6, 2006 as to the real property situated in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being known and designated as Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition (16, 18, 20, 22 Market Square). The United States acknowledges the legal validity and enforceability of the IDB’s interest in the property and the legal validity and enforceability of the Lease and agrees that \$4,511.25 for attorneys’ fees and expenses should be paid from the proceeds of the sale of the lease of the real property located at Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition (16, 18, 20, 22 Market Square).

Cardinal Enterprises, Inc.

Cardinal Enterprises, Inc. filed a claim on October 6, 2006, asserting a legal interest as to the real property located at Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition (16, 18, 20, 22 Market Square) and the real property located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square. (28 Market Square). The United States recognizes the claim of Cardinal Enterprises, Inc., in the amount of \$105,230.42 as of November 30, 2006, with interest accruing thereafter at the rate of \$22.86 per diem. The United States recognizes attorneys’ fees in the amount of \$6,368.20. The United States agrees that said amounts should be paid from the proceeds of the sale of the lease of the real property located at Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition (16, 18, 20, 22 Market Square).

Jason M. Crippen and Rob Gratigny, Trustee

Jason M. Crippen and Rob Gratigny, Trustee filed a claim on November 8, 2006, asserting a legal interest as to the real property located at District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square. (28 Market Square) and as to the real property located at District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being Lot 13 of Swan and Mabry's Addition. (36 Market Square, also known as 320 Wall Avenue). The United States recognizes the claim of Jason M. Crippen and Rob Gratigny, Trustee, in the amount of \$51,966.95 as of November 30, 2006, with interest accruing thereafter at the rate of \$13.44 per diem. The United States recognizes attorneys' fees in the amount of \$2,880.00. The United States agrees that said amounts should be paid from the proceeds of the sale of the real property.

SunTrust Bank

SunTrust Bank filed a claim on October 10, 2006, asserting a legal interest as to the real property located at Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition. (16, 18, 20, 22 Market Square). The United States recognizes the claim of SunTrust Bank in the amount of \$1,202,039.70 as of November 30, 2006, with interest accruing thereafter at the rate of \$205.52 per diem, and agrees that said amount should be paid from the proceeds of the sale of the real property. The United States recognizes attorneys' fees and expenses in the amount of \$5,590.85. The United States recognizes the prepayment penalty in the amount of \$11,907.36 and accrued interest in the amount of \$5,531.35.

Clayton Bank

Clayton Bank filed a claim on October 16, 2006, asserting a legal interest as to the real property located at District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square. (28 Market Square). The United States recognizes the claim of Clayton Bank, in the amount of \$115,237.21 as of November 30, 2006, with interest accruing thereafter at \$27.85 per day. The United States agrees that said amount should be paid from the proceeds of the sale of the real property.

Fikret Gencay

Fikret Gencay filed a claim on October 19, 2006, asserting a legal interest as to the real property located at District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being Lot 13 of Swan and Mabry's Addition. (36 Market Square, also known as 320 Wall Avenue). The United States recognizes the claim of Fikret Gencay in the amount of \$209,826.49 as of December 1, 2006, with interest accruing thereafter at the rate of \$38.31 per diem, and agrees that said amount should be paid from the proceeds of the sale of the real property.

Fikret Gencay filed a claim on October 19, 2006, asserting a legal interest as to the real property located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square. (28 Market Square). The United States recognizes the claim of Fikret Gencay as of December 1, 2006, in the amount of \$197,900.92, with interest accruing thereafter at the rate of \$32.07 per diem, and agrees that said amount should be paid from the proceeds of the sale of the real property.

No other person, corporation, or entity has filed a claim as to the properties listed above.

It is therefore ORDERED, ADJUDGED AND DECREED:

1. That the following properties be and the same are hereby forfeited to the United States, pursuant to Title 21, United States Code, Section 853(h) and Title 18, United States Code, Section 982, and all right, title and interest in said properties be and the same are hereby vested in the United States:

- (a) All legal and equitable interest accorded to the Lessees in the Lease with the Industrial Development Board of the City of Knoxville (the "IDB") dated August 1, 2005, concerning the real property more particularly described as real property, situated in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being known and designated as Lot 19R, in the Resubdivision of Lots 19, 20, 21, and 22, of Swan & Mabry Addition, as shown by map recorded as Instrument No. 200303240084555, in the Knox County Register's Office, said lot being more fully bounded and described by map, to which map specific reference is hereby made for a more particular description including but not limited to the irrevocable right to purchase the real property which is the subject of the Lease. Moreover, the parties agree that the United States shall have the right to sell and otherwise transfer its rights under the Lease. (16, 18, 20, 22 Market Square)
- (b) Real Property, located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, being located on the East side of Market Square, and more particularly described as follows:

BEGINNING at the center of a brick division wall between Eckle and Gossett (former owners) at the pavement on said Market Square; thence Easterly with said Gossett line about 120 feet to an alley; thence Southerly along said alley 20 feet 4 inches; thence Westerly along the center of the wall of the present brick business house formerly belonging to Eckle about 120 feet to Market Square; thence Northerly 20 feet 4 inches to the BEGINNING. Being known as 28 Market Square Mall. It being the true meaning and intent to convey to the second parties to the center of each wall on each side of said lot.

Recorded in Warranty Deed registered on August 28, 2002, as Instrument Number 200208280017284, in the Register of Deeds Office for Knox County, Tennessee, titled to Scott West and wife, Bernadette West. (28 Market Square)

- (c) Real Property, located in District Four (4) of Knox County, Tennessee and within the 6th Ward of the City of Knoxville, Tennessee, and being Lot 13 of Swan and Mabry's Addition, which lot runs 28 feet on the East side of Market Mall and extends East along the South line of Wall Avenue, 118.1 feet, more or less, to an alley, and being more particularly described as follows:

BEGINNING at a point marking the intersection of the Eastern line of Market Square with the Southern side of Wall Avenue; thence in an Easterly direction and with the Southern line of Wall Avenue, North 63 deg. East 118.1 feet to an iron pin in the Westerly line of a 10 foot alley; thence in a Southerly direction with the Western line of said alley, South 27 deg. East 28.0 feet to an iron pin; thence South 63 deg. West 118.1 feet to the Eastern line of East Market Square; thence with the Eastern line of East Market Square, North 27 deg. West 28.0 feet to the point of BEGINNING, as shown by Survey of Property of Fikret T. Gencay by Michael E. Luethke, Tennessee Registered Surveyor No. 842, Luethke Surveying Company, 6538 Vintage Drive, Knoxville, Tennessee 37921. Said survey being dated July 7, 1994, and bearing Drawing No. 94287.

Recorded in Warranty Deed registered on May 9, 2002, as Instrument Number 200205090093076, in the Register of Deeds Office for Knox County, Tennessee, titled to Bernadette West and husband, Scott West. (36 Market Square also known as 320 Wall Avenue)

2. That following the satisfaction of the expenses and claims set forth above in Paragraph Seven (7) (Claims), the United States Department of Treasury shall distribute the collective proceeds from the sale of all properties listed above in Paragraph (1) according to law.

3. That all claimants listed in this Final Order of Forfeiture shall sign a release and provide said release to the government, upon receipt of the payoff of their claims from the United States Department of Treasury.

4. That the Clerk of this Court provide the Internal Revenue Service and the United States Attorney's Office with a certified copy of this Final Order of Forfeiture.

ENTER:

Thomas W. Phillips

THOMAS W. PHILLIPS
UNITED STATES DISTRICT JUDGE

Submitted by:

JAMES R. DEDRICK
United States Attorney

s/ Hugh B. Ward, Jr.
HUGH B. WARD, JR.
Assistant United States Attorney

s/ David C. Jennings
DAVID C. JENNINGS
Assistant United States Attorney

s/ James Michael West (with permission Hugh B. Ward, Jr. & David C. Jennings)
JAMES MICHAEL WEST
Defendant

s/ Jonathan A. Moffatt (with permission Hugh B. Ward, Jr. & David C. Jennings)
JONATHAN A. MOFFATT
Counsel for Defendant, James Michael West

s/ Joanne Baker West (with permission Hugh B. Ward, Jr. & David C. Jennings)
JOANNE BAKER WEST
Defendant

s/ G. Scott Green (with permission Hugh B. Ward, Jr. & David C. Jennings)
G. SCOTT GREEN
Counsel for Defendant, Joanne Baker West

s/ Ronald Scott West (with permission Hugh B. Ward, Jr. & David C. Jennings)

RONALD SCOTT WEST

Defendant

s/ Ronald Scott West (with permission Hugh B. Ward, Jr. & David C. Jennings)

RONALD SCOTT WEST

Shareholder

Preservation Public, L.L.C.

s/ Donald A. Bosch, (with permission Hugh B. Ward, Jr. & David C. Jennings)

DONALD A. BOSCH

Counsel for Defendant, Ronald Scott West

s/ Bernadette Trent West (with permission Hugh B. Ward, Jr. & David C. Jennings)

BERNADETTE TRENT WEST

Defendant

s/ Bernadette Trent West (with permission Hugh B. Ward, Jr. & David C. Jennings)

BERNADETTE TRENT WEST

Shareholder

Preservation Public, L.L.C.

s/ David M. Eldridge (with permission Hugh B. Ward, Jr. & David C. Jennings)

DAVID M. ELDRIDGE

Counsel for Defendant, Bernadette Trent West

s/ Phillip A. Apodaca (with permission Hugh B. Ward, Jr. & David C. Jennings)

PHILLIP A. APODACA

Defendant

s/ Rudy Valenzuela (with permission Hugh B. Ward, Jr. & David C. Jennings)

RUDY VALENZUELA

Counsel for Defendant, Phillip A. Apodaca

s/Jon Cope (with permission Hugh B. Ward, Jr. & David C. Jennings)

JON COPE

Counsel for Jason Crippen and Rob Gratigny

s/ Mark Anthony Cort (with permission Hugh B. Ward, Jr. & David C. Jennings)

MARK ANTHONY CORT

Defendant

s/ James A.H. Bell (with permission Hugh B. Ward, Jr. & David C. Jennings)

JAMES A.H. BELL

Counsel for Defendant, Mark Anthony Cort